



EMORY  
LAW

Emory Corporate Governance and Accountability  
Review

---

Volume 3 | Issue 3

---

2016

## Can We Keep Meatpacking Companies Accountable for Hiring Undocumented Immigrants?

Sapna Jain

Follow this and additional works at: <https://scholarlycommons.law.emory.edu/ecgar>

---

### Recommended Citation

Sapna Jain, *Can We Keep Meatpacking Companies Accountable for Hiring Undocumented Immigrants?*, 3 Emory Corp. Governance & Accountability Rev. 157 (2016).

Available at: <https://scholarlycommons.law.emory.edu/ecgar/vol3/iss3/4>

This Essay is brought to you for free and open access by the Journals at Emory Law Scholarly Commons. It has been accepted for inclusion in Emory Corporate Governance and Accountability Review by an authorized editor of Emory Law Scholarly Commons. For more information, please contact [law-scholarly-commons@emory.edu](mailto:law-scholarly-commons@emory.edu).

# CAN WE KEEP MEATPACKING COMPANIES ACCOUNTABLE FOR HIRING UNDOCUMENTED IMMIGRANTS?

## OVERVIEW

Upton Sinclair's *The Jungle* and its exposé of the meatpacking industry was, for many Americans, the first encounter with the unsanitary and unhealthy conditions of the meatpacking industry.<sup>1</sup> Sinclair's book led to the implementation of food quality standards, an increase in monitoring of food production, and the strengthening of workers' unions which resulted in better working conditions for meatpacking industry workers.<sup>2</sup> Over time, as government subsidies of farms, slaughterhouses, and the meat-producing industry became increasingly common, the demographics of the workers also changed.<sup>3</sup> In the early twentieth century, farm workers consisted of mostly blue-collar American citizens; however, as the use of machines increased, immigrants and afterwards, undocumented<sup>4</sup> workers took the places of these blue-collar Americans.<sup>5</sup>

For meatpacking and poultry companies, undocumented workers have filled a void as American citizens have steadily declined minimum wage jobs which require working in often grotesque and unpleasant conditions.<sup>6</sup> The work "usually involves blood, unpleasant odors, and repetitive tasks."<sup>7</sup> Undocumented workers have provided an ample workforce that is willing to

---

<sup>1</sup> UPTON SINCLAIR, *THE JUNGLE* (Dover Publications 2001).

<sup>2</sup> *Blood, Sweat, and Fear: Workers' Rights in U.S. Meat and Poultry Plants*, HUMAN RIGHTS WATCH (Jan. 24, 2005), <https://www.hrw.org/report/2005/01/24/blood-sweat-and-fear/workers-rights-us-meat-and-poultry-plants>.

<sup>3</sup> WILLIAM G. WHITTAKER, CONG. RESEARCH SERV., RL33002, LABOR PRACTICES IN THE MEAT PACKING AND POULTRY PROCESSING INDUSTRY: AN OVERVIEW (2005) *available at* <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/RL33002.pdf>.

<sup>4</sup> I am choosing to use the term "undocumented" instead of "illegal" to describe these workers because being in the United States without documentation is a civil offense, not a criminal one. Additionally, the term dehumanizes and marginalizes this population of people. Sources used in this essay refer to undocumented workers as illegal immigrants but I will refer to them as undocumented workers.

<sup>5</sup> HUMAN RIGHTS WATCH, *supra* note 2; WHITTAKER, *supra* note 3.

<sup>6</sup> WHITTAKER, *supra* note 3.

<sup>7</sup> Kirstin Downey Grimsley, "Tyson Foods Indicted in INS Probe," WASH. POST. (Dec. 20, 2001), <https://www.washingtonpost.com/archive/politics/2001/12/20/tyson-foods-indicted-in-ins-probe/1979cb63-8d7d-4c8c-9c5f-90f0e79bb7c/>.

work long hours at a minimum wage, resulting in substantial profit for companies, and a supply of affordable meat for the country.<sup>8</sup> Yet even though these undocumented workers are key to the meat-producing industry, their status as such presents an issue of corporate governance for companies. How are companies who hire undocumented immigrants (particularly in the meatpacking and poultry industries) to be held accountable if the companies cannot function without this source of labor unless they take steps that would be in conflict with good business ethics?

One suggested solution could be that meatpacking and poultry companies affected by the fines related to employing undocumented workers would need to increase their lobbying power to influence legislators to provide a path to citizenship for undocumented workers, particularly those working in the meatpacking and poultry plants. However, there is no guarantee that former undocumented immigrants will not lobby for higher wages once they obtain citizenship and are protected under minimum wage law. A simple cost benefit analysis demonstrates how this strategy risks cutting into the profits of the meatpacking companies without certainty that Americans will come to work. This strategy is likely more costly than simply paying the fines for hiring undocumented workers since political capital is difficult to describe in monetary amounts and is subject to change at any time.<sup>9</sup> A comparison to the pharmaceutical industry in this essay provides an example where the consequences of breaking the law do not deter companies from continuing to engage in practices that violate the law.

## I. CHANGING DEMOGRAPHIC OF MEATPACKING FACTORIES

The significant mechanical and union changes in the meat and poultry industries from the 1930s to the 1980s led to the demographic shift of the

---

<sup>8</sup> HUMAN RIGHTS WATCH, *supra* note 2 (Providing unofficial estimates of the number of undocumented workers range from as low as five to as high as twelve million. The U.S. Census Bureau approximated the figure at eight million for the 2000 census. See Kevin E. Deardorff and Lisa M. Blumberman, "Appendix A: Estimates of the Foreign-Born Population by Migrant Status: 2000" in J. Gregory Robinson, *ESCAP II: Demographic Analysis Results*, U.S. Census Bureau, October 13, 2001. Using differing assumptions, the Census Bureau fixed the estimated number of unauthorized migrants at 8,490,491 (p. A-10), 7,662,488 (p. A-11) and 8,835,450 (p. A-11). The census report is available online at: <http://www.census.gov/dmd/www/pdf/Report1.PDF>, accessed on November 17, 2004).

<sup>9</sup> Jerry Kammer, "The 2006 Swift Raids: Assessing the Impact of Immigration Enforcement Actions at Six Facilities," CENTER FOR IMMIGRATION STUDIES (Mar. 2009), <http://cis.org/2006SwiftRaids#49> (citing Pat Dinslage, "Employees' reactions mixed," THE GRAND ISLAND INDEPENDENT, (Sept. 4, 1993)). a 1992 raid where "Monfort Inc., was fined \$103,000 on 25 counts of knowingly hiring illegal aliens").

many workers on the floor.<sup>10</sup> In the 1960s and 1970s, meatpackers' wages were comparable to their blue-collar counterparts working in steel, auto, and other industrial plants.<sup>11</sup> Most of these other laborers had strong labor unions, and had bargained and secured favorable working conditions and wages for their members.<sup>12</sup>

In the 1960s, companies began to move meatpacking plants away from the multistory urban buildings to rural locations, where land was cheaper and plentiful.<sup>13</sup> Many of these new facilities were located in the Midwest and Southern United States, and much of the urban unionized labor force did not move to the new rural locations with the meatpacking factories.<sup>14</sup> There were two theories behind the shift to the new rural locations: (1) companies would be able to cut costs by locating themselves nearer to the feedlots and the areas where the animals were raised to be slaughtered and (2) companies sought lower labor costs as most rural workers were not organized.<sup>15</sup> When companies shifted from their urban locations, the workers that followed the jobs were less likely to unionize because they lacked the similarities and the strength in numbers that had built the significant bargaining power of the unions in the urban areas.<sup>16</sup> The new rural plants provided more room to accommodate single floor sprawling layouts for the new high-powered facilities, as compared to the older multistory urban settings.<sup>17</sup> Another motivation for relocating was the tax incentives local governments offered companies to bring plants to rural areas that sought economic development.<sup>18</sup> As companies built these new complexes, their long organized workers, who had achieved good wages through the bargaining power of organized labor, stayed in the urban areas and a new immigrant population migrated to the rural areas as the rural populations alone could not sustain the demand of workers required by the new meatpacking facilities.<sup>19</sup> The immigrant population consisted of mostly low-skilled workers who sought the jobs that the meatpacking and poultry industry provided.<sup>20</sup> Thus, the immigrants followed the factories to their new rural

---

<sup>10</sup> HUMAN RIGHTS WATCH, *supra* note 2.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> WHITTAKER, *supra* note 3.

<sup>15</sup> WHITTAKER, *supra* note 3.

<sup>16</sup> *Id.*

<sup>17</sup> HUMAN RIGHTS WATCH, *supra* note 2.

<sup>18</sup> WHITTAKER, *supra* note 3.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

locations.<sup>21</sup> The new immigrant population was not unionized which was advantageous for the meat and poultry employers.<sup>22</sup> Meatpacking and poultry management worked to keep immigrant workers from unionizing through threats and firing of union leaders, thereby maintaining low wages for employees.<sup>23</sup>

With the shift to the rural locations, the ethnic, racial, and gender demographic of the labor force changed dramatically from the more homogenous urban unionized labor force.<sup>24</sup> The diversity of the new workforce, linguistically and culturally, compounded with the distance from the urban organized labor force led to difficulties in the rural workforce's ability to organize.<sup>25</sup> This inability to organize and bargain for rights led to a backward slide, from a high-wage, stable, unionized labor force to a low-wage, high turnover, and mostly non-unionized workforce.<sup>26</sup>

## II. HIRING OF UNDOCUMENTED WORKERS IN MEATPACKING FACTORIES

Since the 1990s, along with the influx of immigrants working in the meatpacking and poultry factories, there has been an increase in undocumented workers.<sup>27</sup> The meatpacking factories provided these often low skilled workers with jobs, replicating the trend after World War I where new immigrants, deemed "cheap labor," often worked in similar jobs producing meat.<sup>28</sup> Many of the undocumented workers could be paid minimum wage or lower to work long hours in the factories. Even though the work is dangerous, unpleasant, and dirty, due to the limited options, undocumented workers are less likely to cause problems for management.<sup>29</sup>

Some suggest that meatpacking employers purposely market to immigrants with limited English proficiency, limited work experience, and limited marketable skills.<sup>30</sup> "In pursuit of such a strategy, critics suggest, firms 'deliberately recruit . . . immigrants' who 'almost universally lack any

---

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> HUMAN RIGHTS WATCH, *supra* note 2.

<sup>24</sup> WHITTAKER, *supra* note 3.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> HUMAN RIGHTS WATCH, *supra* note 2.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

knowledge of U.S. working conditions, labor practices, or of their legal rights.”<sup>31</sup> This allows more control of the workers as plant managers can take advantage of workers’ fears. Managers are able to wield power over the undocumented workers or those who support undocumented family members by threatening that they will report them or their family members to the authorities.<sup>32</sup> Because of their lack of knowledge about their legal rights and precarious legal statuses, many workers are afraid of reporting adverse events that happen at work for the fear of being fired or deported.

An additional incentive for employers to hire undocumented workers is that they are more likely to cooperate with management and comply with procedures since they have fewer job opportunities due to their citizenship status.<sup>33</sup> The fear of being fired also leads to underreporting of problems and injuries that occur in the workplace for undocumented workers.<sup>34</sup> These shortfalls end up benefitting the company as it does not have to pay out workers’ compensation fees and remains unaware of whether the workers have injuries, allowing the company to retain more of the profits.<sup>35</sup>

#### A. *Lack of Legal Workers*

One of the main reasons that the meatpacking industry lacks American workers is simply because many Americans do not want to work for a low salary in unpleasant conditions. Meatpacking companies face a question of whether to hire undocumented workers, who work long hours, complain little to management, and accept the minimum wage salary or to raise wages to try to entice Americans to work in the unpleasant factory conditions?

### III. ISSUES OF CORPORATE GOVERNANCE

As companies increasingly seek to balance the interests of investors, shareholders, management, and the Board of Directors, corporate governance

---

<sup>31</sup> *Id.* (Quoting Jacqueline Nowell, “A Chicken in Every Pot: At What Price?” *New Solutions*, vol. 10(4), 2000, p. 329. “Valdes, Barrios Nortenos, p. 225, states: ‘In Lexington [Nebraska], the Latino population rose from 3.3 percent of the total in 1990 to more than 30 percent by 1996 as a result of the opening of an IBP beef-packing plant, and an estimated 75 percent to 80 percent of the workers were from Texas and Mexico.’”).

<sup>32</sup> HUMAN RIGHTS WATCH, *supra* note 2.

<sup>33</sup> WHITTAKER, *supra* note 3 (citing *Ibid.*, pp. 168–173. *See also* Robert Lekachman, “The Specter of Full Employment,” *Harper’s*, Feb. 1977, pp. 36, 38).

<sup>34</sup> HUMAN RIGHTS WATCH, *supra* note 2 (showing 47% of interviewed Latino immigrant injured workers were not reported on the OSHA log).

<sup>35</sup> U.S. GOV’T ACCOUNTABILITY OFF., GAO-05-96, WORKPLACE SAFETY AND HEALTH: SAFETY IN THE MEAT AND POULTRY INDUSTRY, WHILE IMPROVING, COULD BE FURTHER STRENGTHENED (Jan. 2005).

becomes an important tool in the transparency and communication between many parties. In the meatpacking and poultry industry, questions of corporate governance and accountability arise as information about the hiring and retention rates of undocumented workers in factories becomes more apparent. While many large meat-processing companies have “denied knowingly recruiting or hiring illegal workers,” they suggest it is very difficult to get verification about workers’ documentation.<sup>36</sup> Many times, attempts to scrutinize a worker’s documentation can lead to investigations to determine whether companies engaged in employment discrimination, thereby violating the Immigration and Nationality Act.<sup>37</sup> While some companies have been fined for hiring undocumented immigrants, it has often been in connection with fraud and identity theft in attempt to secure false documentation for workers.<sup>38</sup> Some examples include a former chief executive officer of a Kosher meatpacking company who was charged with intentionally helping workers get false documents, a plant manager who helped undocumented workers illegally obtain resident visa numbers so they could get hired but potentially face time in prison or probation and a fine, and a poultry line-supervisor who received a two-year sentence for aiding and abetting the harboring of undocumented aliens.<sup>39</sup>

By simply paying fines and attempting to conduct their daily business without cracking down on whether their workers who have the proper documentation, companies are failing to take corrective action and succumbing

---

<sup>36</sup> David Barboza, *Tyson Foods Indicted in Plan To Smuggle Illegal Workers*, N.Y. TIMES (Dec. 20, 2001), <http://www.nytimes.com/2001/12/20/us/tyson-foods-indicted-in-plan-to-smuggle-illegal-workers.html>.

<sup>37</sup> Press Release, U.S. Dep’t of Justice, Justice Department Settles Immigration-Related Discrimination Claim Against Nebraska-Based Meat Packing Company (Aug. 24, 2015), <http://www.justice.gov/opa/pr/justice-department-settles-immigration-related-discrimination-claim-against-nebraska-based>.

<sup>38</sup> *When Breaking the Law by Hiring Illegal Aliens Doesn’t Work*, FED’N FOR AM. IMMIGRATION REFORM (Nov. 2008), <http://www.fairus.org/issue/when-breaking-the-law-by-hiring-illegal-aliens-doesnt-pay> (“October 2008—Sholom Rubashkin, former chief executive of the Iowa kosher meatpacking company Agriprocessors, and son of its founder, has been charged with intentionally helping illegal workers obtain false documentation (*Washington Post*, October 31, 2008); A day earlier, Laura Althouse, a plant manager pled guilty to helping illegal immigrant workers obtain false resident visa numbers so they could be hired at the plant. She faces a maximum sentence of 12 years and fines of up to \$500,000; A plant human resources manager, Karina Freund, faces similar charges (*New York Times*, October 30, 2008); Freund pled guilty to “aiding and abetting a pattern or practice of hiring undocumented aliens”; She faces a possible maximum sentence of six months in prison or a term of probation of not more than five years and a fine of up to \$3,000 for each undocumented worker involved in the offense (*The Iowa Independent*, December 10, 2008); Martin De La Rosa-Loera, a poultry line supervisor at Agriprocessors, received a two-year sentence for aiding and abetting the harboring of undocumented aliens. De La Rosa entered the United States illegally from Mexico but gained legal status in 2002 (*The Iowa Independent*, March 4, 2009”).

<sup>39</sup> FED’N FOR AM. IMMIGRATION REFORM, *supra* note 37.

to whatever brings in the most profit, legally or not. Additionally, companies realize that it is rare that those who employ undocumented immigrants actually face criminal prosecution; most cases are civil.<sup>40</sup> Thus, if companies' illegal practices are discovered, they often end up settling to avoid the significant attention of a lawsuit and the fees that accompany litigation. These settlements are often conducted with the Department of Justice on behalf of the Immigration and Naturalization Service.<sup>41</sup>

#### IV. AVOIDING CORRECTIVE ACTION IN THE PHARMACEUTICAL INDUSTRY

##### A. *Background on Pharmaceutical Industry Practices*

The allegations and practices of the meatpacking and poultry industry can be compared to the various violations that occur in the pharmaceutical industry by many major companies. Within the pharmaceutical industry, companies have been fined for violating Food and Drug Administration regulations relating to clinical trials, drug production, and marketing (often directly to consumers).<sup>42</sup> Some of the largest settlements include: Johnson & Johnson paying a \$2.2 billion fine for criminal and civil allegations relating to Risperdal, Invega and Natrecor, prescription drugs; GlaxoSmithKline paying \$3 billion for civil and criminal liability for its promotion of drugs and its failure to report safety information.<sup>43</sup>

---

<sup>40</sup> Scott Horsley, *Border Fence Firm Snared for Hiring Illegal Workers*, NAT'L PUB. RADIO (Dec. 14, 2006), <http://www.npr.org/templates/story/story.php?storyId=6626823>.

<sup>41</sup> Aaron Morrison, *Immigration Discrimination Laws: Nebraska Beef Ltd. Improperly Required Workers to Prove Citizenship Status, Justice Department Says*, IBT (Aug. 25, 2015 6:11 P.M.), <http://www.ibtimes.com/immigration-discrimination-laws-nebraska-beef-ltd-improperly-required-workers-prove-2066231>.

<sup>42</sup> Lena Groeger, *Big Pharma's Big Fines*, PROPUBLICA (Feb. 24, 2014), <http://projects.propublica.org/graphics/bigpharma> (Some of the biggest settlements include: "Johnson & Johnson agreed to pay a \$2.2 billion fine to resolve criminal and civil allegations relating to the prescription drugs Risperdal, Invega and Natrecor. The government alleged that J&J promoted these drugs for uses not approved as safe and effective by the FDA, targeted elderly dementia patients in nursing homes, and paid kickbacks to physicians and to the nation's largest long-term care pharmacy provider, Omnicare Inc. As part of the agreement, Johnson & Johnson admitted that it promoted Risperdal for treatment of psychotic symptoms in non-schizophrenic patients, although the drug was approved only to treat schizophrenia"; "GlaxoSmithKline agreed to pay a fine of \$3 billion to resolve civil and criminal liabilities regarding its promotion of drugs, as well as its failure to report safety data. This is the largest health care fraud settlement in the United States to date. The company pled guilty to misbranding the drug Paxil for treating depression in patients under 18, even though the drug had never been approved for that age group. GlaxoSmithKline also pled guilty to failing to disclose safety information about the diabetes drug Avandia to the FDA.").

<sup>43</sup> *Id.*

These companies continually pay money to resolve allegations of fraudulent marketing practices, including marketing drugs that were not approved by the FDA. The Department of Justice has brought suits, on behalf of the FDA, against companies for inappropriate uses of medical devices or medications.<sup>44</sup> Yet most of these companies end up settling with the government, with settlement payments commonly in the millions of dollars, and sometimes billions of dollars.<sup>45</sup> Most companies choose to settle claims because it allows them to continue reaping profits and the plaintiffs are able to recover a considerable sum of money. While this settlement may be good for plaintiffs, who can avoid significant litigation costs, it provides little incentive for the pharmaceutical companies to change the ways in which they do their work.<sup>46</sup> The many illegal practices are not further inquired into and many settlement packages remain confidential with few details available for the public.<sup>47</sup>

Many of the civil settlement agreements require companies to enter into Corporate Integrity Agreements (CIA), which are self-policing mechanisms that companies sign to comply with the U.S. Department of Health and Human Services' policies.<sup>48</sup> The CIAs are tailored to the company to try address the specific facts of the case.<sup>49</sup> Yet some companies continually violate CIAs, seemingly writing it off as part of the cost of doing business in a highly lucrative area.<sup>50</sup> This approach to drug regulation and manufacturing suggests that for pharmaceutical companies, the cost-benefit analysis demonstrates that it makes more sense to pay the fines and settlements than try to fix the problem.<sup>51</sup> By taking a drug to market earlier with patent exclusivity, pharmaceutical companies are able to bring in significant profits despite the

---

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> Caroline Beaton, *Holding Big Pharma Accountable: Why Suing the Pharmaceutical Industry Isn't Working*, HUFFINGTON POST (Oct. 13, 2015, 5:25 P.M.), [http://www.huffingtonpost.com/caroline-beaton/holding-big-pharma-accoun\\_b\\_8280952.html](http://www.huffingtonpost.com/caroline-beaton/holding-big-pharma-accoun_b_8280952.html).

<sup>47</sup> *Id.*

<sup>48</sup> OFFICE OF INSPECTOR GEN., *Corporate Integrity Agreement FAQ*, U.S. DEP'T OF HEALTH & HUMAN SERVS., <http://oig.hhs.gov/faqs/corporate-integrity-agreements-faq.asp>.

<sup>49</sup> *Id.*

<sup>50</sup> Lee Lasris, *Corporate Integrity Agreements—They Can Work, But Beware*, PHARM. COMPLIANCE MONITOR (July 10, 2013), <http://www.pharmacompliancemonitor.com/corporate-integrity-agreements-they-can-work-but-beware/5181/>; Paul Zwier & Reuben Guttman, *Failure of Remedies* 25 (Sept. 16, 2015) (unpublished manuscript) (on file with author).

<sup>51</sup> See Maria Szalavitz, *Top 10 Drug Company Settlements, Pharma Behaving Badly*, TIME (Sept. 17, 2012), <http://healthland.time.com/2012/09/17/pharma-behaving-badly-top-10-drug-company-settlements/>.

millions and billions of dollars in settlements that may loom in the future.<sup>52</sup> The global pharmaceutical market is worth \$300 billion per year, and expected to rise, with the 10 largest drug companies controlling over one-third of this market, most with sales over \$10 billion per year and profit margins of about 30%.<sup>53</sup> While most companies have found that choosing to follow the ethical path has paid off with customers, it contrasts with the pharmaceutical industry where the faster products make it to the market, the more revenues they are likely to bring in.<sup>54</sup> Additionally, once patients take medications, it is unlikely that they will be taken off of the medication unless significant harm or death results, thus the pharmaceutical companies continuously retain its profits until a substitute is made or drug trials show a different beneficial result.

### *B. Comparisons between the Meatpacking Industry and the Pharmaceutical Industry*

In both the meatpacking and pharmaceutical industries, it is commonplace to take part in behavior that violates the law, whether it be hiring undocumented workers or marketing drug products contrary to the FDA's rules. While companies will not outwardly admit to these practices, federal and non-governmental organization investigations have shed light on these practices and their prevalence throughout the industries. Organizations such as ProPublica monitor pharmaceutical company settlements to keep track of the continuing settlements and violations that occur and Human Rights Watch and the Congressional Research Service track and report the status of workers in meatpacking and poultry plants.<sup>55</sup>

The rewards of compliance are low as compared to the costs and losses companies must incur to make these changes. For example, the cost-benefit analysis that companies in both industries undertake suggest that there is a tolerance and even willingness to pay the fines and pursue settlements because companies are still making significant profits. The most salient reason that both industries undertake these unethical practices is that the industries

---

<sup>52</sup> Michael Bobelian, *J&J's \$2.2 Billion Settlement Won't Stop Big Pharma's Addiction To Off-Label Sales*, FORBES (November 12, 2013), <http://www.forbes.com/sites/michaelbobelian/2013/11/12/jjs-2-2-billion-settlement-wont-stop-big-pharmas-addiction-to-off-label-sales/>; Paul Zwier & Reuben Guttman, *Failure of Remedies* 49 (Sept. 16, 2015) (unpublished manuscript) (on file with author).

<sup>53</sup> *Trade, foreign policy, diplomacy and health: Pharmaceutical Industry*, WORLD HEALTH ORG. (2016), <http://www.who.int/trade/glossary/story073/en/>.

<sup>54</sup> Remi Trudel & June Cotte, *Does Being Ethical Pay?*, WALL ST. J. (May 12, 2008) <http://www.wsj.com/articles/SB121018735490274425>.

<sup>55</sup> ProPublica, *About Us*, PROPUBLICA (2016), <https://www.propublica.org/about/>.

recognize that the American population cannot survive (or would be very unhappy) if these industries were so burdened by the requirements and fines that they are put out of business. For many Americans, meat is a dietary staple and is often recommended as part of a balanced diet.<sup>56</sup> If meatpacking and poultry companies were to go out of business this would have a seismic impact not only on consumers, who would not have a food staple, but also on the American economy because the industry, along with suppliers, distributors, retailers and ancillary industries employs almost 6.2 million people in the United States.<sup>57</sup> Legislators must be cautious in stifling pharmaceutical innovation as companies continue with research and development for drugs to combat the many diseases that plague our current society. Even more so, political decision makers must delicately balance the issues of undocumented workers without causing significant harm to the meatpacking industry as problems with supplying meat and poultry would almost ensure a backlash and significant negative publicity for those involved in cracking down on the meatpacking industry.

## V. POSSIBLE SOLUTIONS

### A. *Raising Wages*

One suggested solution is to raise wages for workers in the meatpacking and poultry industry. As suggested earlier, there is a possibility that American workers would be more willing to work in the unpleasant and dangerous conditions if they were paid a higher salary.<sup>58</sup> Yet this option would likely cut significantly into the profits of meatpacking companies. By impacting not only a company's bottom line, but the way an industry functions, it is a significant risk and one where there is no clear guarantee of the payoff. For meatpacking plants, there is not necessarily a guarantee that American workers would come back to work in meatpacking factories. Additionally, it is a significant risk to take as it could lead to workers unionizing and demanding various improvements in conditions and wages, cutting further into company profits. There is a high potential that raising wages and attracting American workers back would put companies in a financially worse position than they might be

---

<sup>56</sup> *All About the Protein Food Groups*, U. S. DEP'T OF AGRIC. (Feb. 3, 2016), <http://www.choosemyplate.gov/protein-foods>.

<sup>57</sup> *The United States Meat Industry at a Glance*, N. AM. MEAT INST. (2015), <https://www.meatinstitute.org/index.php?ht=d/sp/i/47465/pid/47465>.

<sup>58</sup> WHITTAKER, *supra* note 3.

currently, as they just pay the fines for employing undocumented immigrants. During the 1990s, some estimates suggested that undocumented workers made up as much as 25% of the meatpacking and meat processing workforce, but it is likely that the number is much higher and accurate numbers are not available due to the negative consequences of identifying as an undocumented worker.<sup>59</sup>

Accompanying the wage hike, factories would need to implement constant federal enforcement to ensure that undocumented workers are not employed.<sup>60</sup> This would then help deter undocumented immigrants from even attempting to apply to meatpacking jobs, as there would be a greater chance that their undocumented status would be discovered and then reported to federal and state authorities. Additionally, continued enforcement would require many resources because of the high rates of turnover within the meatpacking industry.<sup>61</sup> Overall, this seems to be a risky strategy from a business perspective, making it less likely that meatpacking companies would pursue this strategy.

*B. Passing an Immigration Plan Focused on Undocumented Workers in Agriculture and Meatpacking*

Another possible solution is for lawmakers to pass a narrow immigration plan that focuses on undocumented workers in the agriculture and meatpacking industries. Currently raids by law enforcement on plants with high numbers of undocumented workers lead to fear, thereby resulting in an unstable work force.<sup>62</sup> This also creates problems because plants are then unable to predict how and if they can sustain production, hindering the successful business model that has driven the industry thus far.<sup>63</sup> Additionally, the constant fear of raids is not only detrimental for the undocumented workers, but it also disrupts the U.S. citizens and properly documented immigrants who are trying to establish themselves and make a living.

Yet analyzing the current political climate and the ongoing tension about immigration policy, lawmakers would face serious political backlash, particularly in the Midwest and South where many of these meatpacking plants are located. This slippery slope argument would be difficult to justify a path to

---

<sup>59</sup> WHITTAKER, *supra* note 3 at 46; U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 23.

<sup>60</sup> WHITTAKER, *supra* note 3.

<sup>61</sup> *Id.*

<sup>62</sup> Mark Steil, *Meat-Packing Plant Loses Workers to Immigration Raid*, NAT'L PUB. RADIO (Dec. 13, 2006), <http://www.npr.org/templates/story/story.php?storyId=6620724>.

<sup>63</sup> *Id.*

immigration in one industry and not in others. It would also set up the potential for abuse as a loophole for undocumented workers to find a path to citizenship. None of this takes into account the current American citizens and immigrants who are currently competing for jobs with undocumented immigrants.<sup>64</sup> The limited benefit for the meatpacking plants would be that companies would no longer have an incentive to smuggle undocumented immigrants for corporate profits.<sup>65</sup> But even with this limited benefit, it is likely that factories would have to educate workers on their rights and with undocumented workers no longer afraid of having their status exposed, worker injuries and compensation reporting and costs would increase, requiring companies to increase their overall payouts.

### CONCLUSION

Through this analysis of the meatpacking industry, it is clear that there is no easy solution. A multifaceted approach involving labor and worker safety, agriculture and meatpacking plants, and immigration reform will be required to ultimately solve this issue. With the current political climate, immigration reform seems to be one of many major public policy obstacles to be able to hold meatpacking companies accountable for hiring undocumented workers. This is critical as Congress has said that the prevention of undocumented immigrants should not harm U.S. citizens, providing companies with a fine line and narrowing their options for remedying the problem.<sup>66</sup> Even with this information, it is clear that simply fining meatpacking companies will not provide an incentive to changes their ways. Monetary punishment will continue to be endured as long as profits continue to come in and as long as citizens demand meat and poultry without questioning the way in which their food is produced. To hold meatpacking companies accountable for hiring undocumented workers, it cannot be left solely to the government. Consumers must question who is working to provide their meat and poultry. As informed consumers, they can exert the power of the pocketbook by choosing to support meat and poultry providers who hire documented workers. This would highlight the demands of consumers for investors and shareholders who can in turn put pressure on company Boards of Directors and management.

---

<sup>64</sup> Tanya Ott, *Tyson Foods Faces Suit over Illegal Workers*, NAT'L PUB. RADIO (Dec. 13, 2006), <http://www.npr.org/templates/transcript/transcript.php?storyId=7029375>.

<sup>65</sup> Press Release, U.S. Dep't of Justice, *INS Investigation of Tyson Foods, Inc. Leads to 36 Count Indictment for Conspiracy to Smuggle Illegal Aliens for Corporate Profit* (Dec. 19, 2001), *available at* [http://www.justice.gov/archive/opa/pr/2001/December/01\\_crm\\_654.htm](http://www.justice.gov/archive/opa/pr/2001/December/01_crm_654.htm).

<sup>66</sup> WHITTAKER, *supra* note 3.

Consumers must demand that companies listen to their customer base, not simply their bottom lines.

SAPNA JAIN\*

---

\* Emory University School of Law, J.D. Candidate, 2017; Executive Administrative Editor, *Emory Corporate Governance and Accountability Review*; Conference Chair, Legal Association for Women Students; B.A. Political Science, Wellesley College. I would like to thank Professor Jeffrey Pennell for helping me explore this topic and Richa Khanna, Karen Kolacinski, and Nicole Fukuoka for helping me craft and refine my work throughout its many drafts.